

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

LOREEN OLSON

Appellant

v.

THE CURATORS OF THE UNIVERSITY OF MISSOURI AND
MICHAEL O'BRIEN, IN HIS OFFICIAL AND INDIVIDUAL CAPACITY

Respondents

DOCKET NUMBER WD74670

DATE: October 23, 2012

Appeal From:

Circuit Court of Boone County, MO
The Honorable Mary (Jodie) Capshaw Asel, Judge

Appellate Judges:

Division Four
James Edward Welsh, C.J., Thomas H. Newton, J., and Frederick P. Tucker, Sp. J.

Attorneys:

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Counsel for Respondents

MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

LOREEN OLSON, Appellant, v. THE CURATORS OF
THE UNIVERSITY OF MISSOURI AND MICHAEL
O'BRIEN, IN HIS OFFICIAL AND INDIVIDUAL
CAPACITY, Respondents.

WD74670

Boone County

Before Division Four Judges: James Edward Welsh, C.J., Thomas H. Newton, J., and Frederick P. Tucker, Sp. J.

After being denied appointment to chair her academic department, Loreen Olson filed a lawsuit against the University of Missouri and Michael O'Brien for damages, raising six counts, only four of which are at issue on appeal. In the first two counts, Olson alleged that the University and O'Brien breached two oral agreements that Olson had entered into with O'Brien to become the successor chair. In the third count, Olson alleged that the defendants breached the covenant of good faith and fair dealing, and in the fourth count, she requested promissory estoppel. Thereafter, the University filed a motion for partial summary judgment on these four counts, which the trial court granted. Olson appeals.

In her first, second, and fourth points, Olson argues that the trial court erred in entering summary judgment on all four counts because "a jury could reasonably find that the parties created two employment contracts," one for a two-month term, followed by an agreement for a three-year term; a party's "intent to enter into such a contract is a question for the fact-finder"; and those claims "rest on a factual finding that a contract exists, which must be determined by a jury."

In its motion for summary judgment, the University argued that the undisputed facts showed a contract did not exist because Olson rejected O'Brien's offer. If the undisputed facts showed that a contract did not exist, the University would be entitled to judgment as a matter of law on Olson's first two counts. As for the third count, promissory estoppel does not require the existence of a contract, but the University would still be entitled to judgment as a matter of law on this claim if the undisputed facts showed that Olson rejected the offer to become successor chair because her rejection would negate the element of detrimental reliance.

In her third point, Olson argues that the trial court erred in entering summary judgment on all four counts based on the statute of frauds. The University raised the statute of fraud in its motion, but the trial court did not grant the motion on that basis. Nonetheless, we can affirm on any legal theory supported by the record. The statute of frauds precludes the enforcement of oral contracts that cannot be performed within a year. Thus, the defense was not applicable to the two-month agreement. A claim of promissory estoppel based on certain facts may be a valid exception to the statute of frauds, so the defense was not a bar to the fourth claim. As for the claim for breach of the covenant of good faith and fair dealing, the defense only bars the claim concerning the three-year agreement. Thus, we are left to decide whether the defense precluded the enforcement of the three-year term agreement.

REVERSED AND REMANDED.

Division Four Holds:

Contrary to the University's contentions, the undisputed facts do not negate the existence of a contract as a matter of law. Rather, inferences must be drawn from the undisputed facts to show that Olson and O'Brien did not enter into an oral agreement. Those same facts support an inference that Olson accepted, rather than rejected, the chair appointment. Because under our review of a summary judgment any inferences must be drawn in Olson's favor, a genuine dispute exists as to whether Olson rejected the chair appointment. Olson's first, second, and fourth points are granted.

The statute of frauds is satisfied if a writing exists with the essential terms of the contract signed by the party against whom enforcement is sought. The writings Olson presented to satisfy the statute of frauds are ambiguous as to whether they constitute offers or memorandums reflecting an agreement. Thus, summary judgment could not be granted on this disputed issue. Olson's third point is granted.

Therefore, we reverse the partial summary judgment and remand the case to the trial court for further proceedings consistent with this decision.

Opinion by: Thomas H. Newton, Judge

October 23, 2012

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